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B, who had agreed to sell lands, to which he claimed title, to H & S for $8,000, employed W, an attorney, who had long been employed by him to do legal business, to draw the contract of sale, which W did, and witnessed its execution. H & S then employed W to examine the title. In doing this W found that the title was apparently in C, though C had never asserted it. W, for a consideration of $25, represented that he wished it to protect the title of clients, procured a conveyance of the lands to his brother from C. The brother was not cognizant of this transaction. Thereafter W instituted an action of ejectment in his brother's name to recover the lands. In an action by B to have the deed to the brother of W declared fraudulent, etc.: *Held*, that the relation of client and counsel subsisted between B and W, and the conveyance from C to the brother inured to the benefit of B. Id.
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[See NEGOTIABLE AND ASSIGNABLE PAPER.]

BILLS OF EXCEPTIONS.
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BILLS OF LADING.
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Although an indorsee receives a bill of lading from a fraudulent vendee, with instructions to take up a particular draft, yet if he is liable upon other drafts of the vendee, he may hold the goods to indemnify himself against that liability, although he receives notice of the fraud before the other drafts become due. Id.
Negotiability is a technical term derived from the usage of merchants and bankers in transferring, at first, bills of exchange, and, afterwards, promissory notes. Bills of exchange and promissory notes are exceptional in their character. Therefore, *held*, that under a statute making bills of lading negotiable by indorsement and delivery, all the consequences of an indorsement and delivery of bills and notes before maturity do not ensue, and are not intended to result from such negotiation. Shaw v. Merchants Nat. Bk. 189.

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[See AGENCY.]

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CARRIERS.
Agents and Servants.
A conductor can not, in violation of a known rule of the company, license a man to occupy a place of danger so as to make the company responsible. Pennsylvania R. Co. v. Langdon, 30.
A local freight agent has no authority to enter into a contract for the transportation of goods beyond the line of the company. Grover & Baker Sewing Mac. Co. v. Missouri, etc. R. Co., 65.
Of Goods and Animals.
A common carrier received a package for transportation, agreeing to carry it for a stipulated sum prepaid, without inquiry as to its value or notice of a limited liability on account of value, and without misrepresentation or artifice on the part of the shipper. Discovering that the package was of greater value than he had supposed, he refused to deliver it to the consignee without additional compensation which the consignee paid. *Held*, that the latter might maintain an action to recover it back, 59.
A railroad company may be bound by special contract, but not otherwise, to transport persons or property beyond the line of its own road. Grover & Baker Sewing Machine Co. v. Missouri, etc., R Co. 65.
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A passenger who voluntarily leaves his proper place in the passenger car, in violation of a known rule of the company, to ride in the baggage car or other known place of danger, and who is injured in consequence of such violation, can not recover damages for such injury. Id.
Where the rule violated is one having regard exclusively to the safety of passengers, it seems that damages can not be recovered for an injury resulting from such violation, even though the negligence of the company's servants was the cause of the collision or other accident by which the injury was occasioned. Id.
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CARRIERS—Continued.

eject such passenger between stations. A passenger who refuses to pay the regular fare is from that moment an intruder, and wrongfully on the train, and has no lawful right to be carried gratis to the next station, but may be expelled at once. Toledo, etc., R. Co. v. Wright, 47.

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Provision of Mississippi Constitution as to disqualification for not paying over money is not confined to public officers, 35.

A statute which, without regard to its possibility or impossibility in any case, requires, as a prerequisite to the exercise of the right to vote, the previous registration of the elector, is unconstitutional. Dells v. Kennedy, 44.

Statute imposing penalty on railway conductors for failing to cause their trains to stop five minutes at every way station, constitutional, 59.

Statute limiting right of admission as attorney at law to white male citizens, not in conflict with Federal Constitution, 59.

Legislature cannot take away right of trial by jury, 71.

Majority of all electors of State required to ratify constitutional amendment, 78.

Right of an individual to penalty incurred under statute, a "civil cause" within New Hampshire Constitution, and cannot be taken away by repeal of statute, 225.

Statute taxing dogs constitutional, 236.

Statute prohibiting bakers from carrying on their business on Sunday is "special," and therefore unconstitutional. A law is not "general" within the meaning of the Constitution, simply because it bears equally upon all persons to whom it is applicable. A "general law" must be as broad as its object. *Ex parte* Westerfield, 267.

Citizenship; article by Henry Wade Rogers, Esq., 281.

When retrospective legislation prohibited, 314.

The courts of the United States, in determining questions of general commercial law, are not controlled by the decisions of a State court, even in an action instituted by a National bank, located in the State rendering such decision, against one of its citizens, upon a negotiable note there executed and payable. Such decisions, not based upon local legislative enactments, are not "laws" within the meaning of the Federal statute, which provides that "the laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply." Brooklyn City R. Co. v. Bank of the Republic, 330; and see 379.

Provision in Pennsylvania Constitution, that "the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted," does not, in the absence of legislative enactment, give a right of action to the personal representatives of the deceased, 356.

Constitution having designated offenses for which certain officers may be removed from office, Legislature has no power to prescribe removal from office as a penalty for offenses not so designated, 378.

Nor can it, by declaring that given offense shall be deemed one of a class of offenses for which an officer may be removed, make it of that class and authorize or require the removal of an officer upon conviction of such offense, 378.

A law imposing a smaller license tax on proprietors of bars on steamboats than on bars on land is not unconstitutional because not uniform, 379.

The Supreme Court having on Feb. 8, 1878, decided that a tax collector has no authority to sell an undivided interest in the land, so as to constitute the purchaser a tenant in common with the owner; and that when the only previous notice was that the land or such undivided part thereof as might be necessary, would be sold, any sale, although of the entire parcel of land, was void—on May 6, 1878, the legislature passed a statute, to take immediate effect, in these words: "No sale heretofore made of real estate taken for taxes shall be held invalid by reason of the notice of sale having contained the words, 'or such undivided portion thereof as may be necessary,' or the words, 'or such undivided portions of them as may be necessary;' provided, however, that this act shall not apply to any case wherein proceedings at law or in equity have been commenced involving the validity of such sale, nor to any real estate which has been alienated since the 8th day of February of the current year, and before the passage of this act. *Held*, that this statute was unconstitutional and void. Forster v. Forster, 407.

Statute authorizing indictment in county other than than that in which offense was committed, unconstitutional, 415.

Texas statute taxing selling of wines and liquors, but exempting such as are made in State, unconstitutional, 452.

A State may abolish any public office created by law; but where a State makes a contract with a public officer, such a contract is within the constitutional prohibition, and cannot be impaired. Hall v. State, 468.

State statute which permits any debtor, assessed upon personal property, to deduct amount of his debts from valuation of all his personal property, including money capital, except bank shares, is unconstitutional as to National bank shares, 472.

Act requiring registry of judgments against city does not impair obligation of contract, 494.

Tax to reimburse public officials for losses, constitutional, 497.

Statute which repeals an act, limiting the time within which crimes shall be proscribed, is not an *ex post facto* law, within the meaning of the Federal or State Constitution. State v. Moore, 507.

A person committed certain crimes at a time more than two years antecedent to the finding of an indictment, and at a time when the law barred the prosecution for such crimes by the lapse of two years: after two years had run and the prosecution was thus barred, the legislature repealed the act of limitation, and extended the time three years beyond the original limit. *Held*, that such repeal and extension were valid. Id.

Judicial power; eleventh amendment; jurisdiction of Federal courts, 514.

Regulation of commerce, 515.

CONSTITUTIONAL LAW—Continued.

Where officers of city or State provide public schools of equal excellence for all children between certain ages, but do not allow children of colored parents to attend the same schools with children of white parents, rights of former under Constitution and law of United States not impaired thereby, 520.

CONSTRUCTION.

[See INTERPRETATION.]

CONTEMPT.

Party to equity cause who is in contempt, will not be heard until contempt is purged, 419.

Courts of record have an inherent power to punish for disorderly conduct in the court-room, resistance of their process, or any other interference with their proceedings which amounts to actual contempt. Section 2 of ch. 28, Comp. Laws, (Kas.) 1879, places no limit on the power of the district court in matters of contempt, but only upon that of the district judge at chambers. *In re* Millington, 447.

CONTRACTS.

Illegal. See, also, OFFICES AND OFFICERS.

Contracts for delivery of grain when void, 56.

Agreement to refrain from prosecution when not inferred, 95.

An agreement to withdraw from prosecution for larceny by a bailee, or for any other felony, or any misdemeanor of a public nature, with a view to private benefit, bad, as against public policy, 215.

Contract to rent house for purpose forbidden by city ordinance, illegal, 224.

Plaintiffs were champagne merchants at Epernay, in France. Defendant, whose name was the same as that of plaintiffs, having entered their house and learnt the business, acted for two years as their representative in England, and then wrote a letter to them, by which he undertook not to represent any other champagne house for two years after leaving plaintiffs' employment, and not to establish himself or associate himself with other persons or houses in the champagne trade for ten years after leaving them. Defendant left plaintiffs' employment in March, 1877, and in May, 1878, commenced business in London as a retail wine merchant, and sold champagne as well as other wines. In his circulars and advertisements, and on the labels and corks of the champagne bottles, were the words "Ay Champagne," but he had no establishment anywhere except in London. *Held*, that the defendant had committed a breach of the agreement. *Held*, also, that the agreement was valid, as the restriction was not larger than was necessary for the reasonable protection of the plaintiffs. There is no hard and fast rule that a contract in restraint of trade unlimited as to space is invalid, but the validity depends on the reasonableness of the contract. Rouissilon v. Rouissilon, 270.

Compounding public offense, an illegal consideration for a contract, 395.

Agreement not to follow calling within specified limits valid, 451.

When contract in restraint of trade is reasonable, subsequent circumstances, such as the covenantees ceasing to do business, do not affect its operation, 451.

Contract to procure a pardon or refrain from prosecution illegal, 479.

Miscellaneous.

A, a baker in Detroit, ordered of B, an ornamental sign painter in New York, a quantity of show cards. The contract was entered into by correspondence, and in one of his letters A enclosed a sketch of what he wanted, which among other things contained a shield with the word "established" on one side of it and the figures "1875" on the other. The letter stated that A wanted "something of this style," referring to the sketch, and concluded by saying, "Give us a clean, neat label." The cards were completed and forwarded to A, who refused to receive them, for the reason that the word "established" and the figures "1875" were placed at the top instead of in the position indicated by the sketch. *Held*, that the contract gave B a discretion as to the artistic arrangement of the figures, and that A's refusal to accept could not be sustained. Thoubboron v. Lewis, 28.

Construction of contract; advertisement in book sold by subscription, 94.

Non-performance caused by act of God no breach, 138.

Where parties contract for doing of certain work, and work is done and accepted, but there is a misunderstanding as to the price, law rejects understanding of each, and awards reasonable compensation, 178.

Implied contract to pay for board of insane person, 218.

CONTRACTS—Continued.

Absolute covenant in contract not discharged by performance becoming impossible, 219.

Where negotiations for the sale of goods are pending between parties, and an offer of terms is made by one party, such offer remains in force as a continuing offer until the time for accepting or rejecting it has arrived, unless it be revoked before acceptance. But a revocation in order to be operative, must be communicated to the other party before he dispatches his acceptance. Stevenson v. McLean, 229.

A contract to supply water for domestic purposes can not be extended to furnishing water for sprinkling streets, 236.

Breach of promise of marriage; right of party to cancel engagement, 257.

Where one settles upon the land of a railroad company which, by circulars printed and distributed by it, is offered to any one settling thereon at a price to be afterwards fixed, a contract is created of which equity will decree specific performance. Boyd v. Bricken, 287.

Death of contracting party ends contract, 297.

Woman having no right of action for seduction, forbearance to sue not a sufficient consideration for a contract, 314.

To make a contract, the minds of the parties must meet as to its terms. Therefore, where A agreed to take a subscription book from the agent of B, the payment to be made by the proceeds of his office for a certain period, but the instructions to the agent prohibited any such agreement by the agent: *Held*, that B could not recover the publication price of the book except under the above agreement, as A had never assented to any other contract. Everts v. Selover, 470.

Q, having entered into a contract with a county board to do all the county printing at rates less than those allowed by statute, and having received and done such printing, sought to repudiate the contract rates and recover at those named in the statute. *Held*, that the contract rates controlled. Quigley v. Commrs. 510.

Where a contract is made to do certain work at certain rates, the contract rates control as to the work actually done, although all the work contracted for was not given by the employer to the contractor. The latter may not repudiate the contract *in toto*, and recover upon a *quantum meruit*, but may recover any damages sustained from the employer's breach of contract. Id.

Contract when not implied for work done, 516.

Member of society of Shakers bound by his covenant with society, whereby on becoming member he stipulates never to make any claim for his services, 224.

Ratification.

Fraud which amounts to a crime can not be ratified; *aliter*, where the transaction is simply contrary to good faith, 17.

Forgery of indorsement of promissory note can not be ratified, 17.

Statute of Frauds.

The statute of frauds will be satisfied by such a statement in a written contract as ascertains the price to be paid, although it mentions no specific sum, as for instance, if to pay a price to be settled by arbitration, or upon the valuation of appraisers to be selected by the parties. Norton v. Gale, 129.

Where a lease of lots, executed by both parties, fixed the annual rent for the first five years, and then provided that the amount of the rent to be paid annually for the next five years should be six per cent. on the appraised value of the premises, to be ascertained by appraisers, one to be selected by each party, and they to select another, in case they could not agree, it was *held* that the contract was not within the statute of frauds, as to the rent to be paid for the second five years. Id.

Agreement to charge hereditaments with the value of property which has been lost through wrongful act of third person, is within the, 215.

R's servant being injured by the negligence of W, a physician was sent for by W to treat him. R told the physician that W was responsible for the accident, adding, "But I will see that you are paid." *Held*, that the promise of R was within the statute of frauds. Rose v. O'Linn, 268.

What not sufficient acceptance under, 374.

Telegraphic message, sufficient compliance with, 39 6

Promise by president of corporation of dividends if party will take stock, not within, 397.

Parol contract concerning land may be subject of action, although it can not be enforced by specific performance, 415.

CONTRIBUTORY NEGLIGENCE.

[See CARRIERS; NEGLIGENCE.]

CONVERSION.

[See, also, TROVER.]

When demand before action for, not necessary, 421.

COPYRIGHTS.

[See PATENTS, COPYRIGHTS AND TRADE-MARKS.]

CORPORATIONS.

[See, also, NEGLIGENCE.]

A corporation not a "person" within English statute as to selling poisons, 74.

A corporation may be indicted for Sabbath breaking, 94.

When liable to officer (president or director) for services, 118.

Liability of company for wrongful issue of certificate of shares, 176.

Records of corporation not constructive notice to persons dealing in stock, 176.

That corporation has not complied with law authorizing it to do business good answer to action to collect debt, 316.

One who accepts and holds certificates for unpaid shares of stock in a corporation, and votes such shares at annual elections, is estopped from denying his liability as a stockholder to the corporation or its creditors, although such shares were issued to him under an agreement in writing that they were to be held in trust or as a security only, and were not subscribed for on the books of the company, or otherwise, in the usual manner of making such subscriptions. One may be constituted a stockholder by his conduct as effectually as by the rigid observance of the usual formalities in making subscriptions. Griswold v. Seligman, 432.

Parol evidence is not admissible to show that the stock was voted under an arrangement with the company, made outside of the written contract for a specific purpose, to the effect that such holder should have the privilege of voting the stock without attendant liability. Id.

In a proceeding to enforce such liability, it is unnecessary to show that the creditor became such subsequently to the acquisition of the stock by the defendant, or in consequence thereof, or altered his condition by giving credit to the company on the faith of defendant being a stockholder. Under the Missouri statute the liability attaches to the holder of the stock at the date of the execution. Id.

Parties dealing with a corporation are not affected with notice of entries made upon its corporate books limiting the liability of holders of unpaid stock. Id.

Capital stock issued by a railroad corporation to be held in trust, or as collateral security, is not within the protection of sec. 771 Rev. Stat. Mo., which provides: "No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such company; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such fund, would have been if he had been living and competent to act, and held the stock in his own name." Id.

COUNTERCLAIM.

[See PLEADING AND PRACTICE.]

COVENANTS.

[See VENDOR AND VENDEE.]

CRIMES.

[See the various special titles.]

CRIMINAL CONVERSATION.

Action lies by husband for criminal conversation, even where wife has not consented to unlawful connection, 413.

In action for criminal conversation, testimony of husband and wife that they had had no intercourse at time child was begotten, and that defendant "must have been its father," inadmissible, 413.

That wife consented to adultery, relevant, 475.

CRIMINAL EVIDENCE.

Miscellaneous.

Corroboration of testimony of accomplices, 76.

CRIMINAL EVIDENCE—Continued,

Proof of the *corpus delicti* may be shown by circumstantial evidence, 111.

Admissibility of statements made before grand jury in another case, 138.

Confession when not admissible, 277.

Evidence given on preliminary examination admissible on trial, 296.

Admissibility of dying declarations, 296.

What not admissible as *res gestæ*, 298.

Proof of guilt of co-defendant does not tend to show innocence of defendant, 454.

On trial for keeping game cock, declarations of party at time of arrest admissible, 514.

Witnesses.

Credibility of defendant as witness in criminal cases, 15.

At what time defendant may offer evidence to prove his character for truth, 16.

Admissibility of evidence of judge as to what occurred on former trial before him, 179.

Witness on cross-examination bound to answer criminating question, 236.

Proof of the *corpus delicti*; discussion of the question; the *Globe Democrat* on the subject, 258, 259.

Correct to ask witness as to his age, condition in life, etc., 298.

Voluntary testimony of party on preliminary examination may be put in by State, 315.

Court may allow witness to be recalled, 315.

Right of challenge, 478, 516.

CRIMINAL LAW AND PROCEDURE.

Judgment, Sentence, etc.

A prisoner entered a plea of guilty under a belief that by so doing a less severe punishment would be awarded. The judge sentenced him to the maximum allowed by law for that offense. The prisoner then asked leave to withdraw his plea, which was refused and judgment entered. *Held*, error. State v. Stevens, 5.

Two years in the county jail is not a cruel and unusual punishment in the case of one who has beaten his wife, 59.

Where a defendant is convicted of separate misdemeanors charged in separate counts in the same indictment, the court has power to pass separate sentences exceeding in the aggregate the maximum punishment for one offense. Castro v. Queen, 291.

C was charged in the first count of the indictment with perjury in a trial at Westminster, and in the second count with perjury before a commissioner in London, the same false statement being charged in both counts. He was tried in the Court of Queen's Bench at bar, convicted on both counts, and sentenced on the first count to seven years' penal servitude, and on the second count to a further term of seven years' penal servitude, to commence immediately on the expiration of the first term. A writ of error having been brought: *Held*, that the sentences were warranted by law. Id.

By 2 Geo. 2, ch. 25, sec. 2, and the Penal Servitude Acts a person convicted of perjury may be sentenced to penal servitude "over and besides such punishment as shall be adjudged to be inflicted on such person agreeable to the laws now in being." *Held*, that a sentence of penal servitude may be inflicted for perjury without any other punishment. Id.

The circuit judge has no power to set aside a judgment after the expiration of the term at which it was rendered, and the only remedy in such case is by writ of error *coram nobis*, and the circuit judge has power in term, upon an assignment of an error of fact, to issue such writ. Adler v. State, 484.

Miscellaneous.

Attorney employed to assist prosecution may ope case to jury, 376.

When comments of prosecuting attorney in speech jury not ground for new trial, 377.

Record may be corrected at same term *nunc pro tunc* 416.

Expression of opinion that accused person is guilty by grand juror before sworn, not a ground of chal lenge, 472, 479.

Proceedings in grand jury room not provable, 472.

Jury can not view scene of crime in absence of prisoner, 477.

Right of challenge, 478.

The circuit court has power to order a change of venue from the circuit court of one county to that of another, so as to give the latter jurisdiction over the case; and, in criminal cases, only one change of venue will be allowed. Adler v. State, 484.

CRIMINAL LAW AND PROCEDURE—Continued.
Change of venue to try error of any particular fact, change the whole case, Id.
Dr. Tanner's feat; how far such exhibitions amenable to the criminal law, 159, 200.
C and B having been jointly indicted in the County of P for murder, venue of case was upon application of B and over the objections of C changed to the County of S; C, having afterwards been again indicted in County of P for the same offense and there put on trial, pleaded in abatement the pendency of the indictment in the county of S. *Held*, that the plea was properly overruled, 195.
Disqualification of judge to try case does not prevent him from receiving report of grand jury for term, 195.
If first indictment were such as prisoner might have been convicted upon by proof of facts contained in second indictment, acquittal or conviction on first indictment will bar second, 216.
When, after first prosecution, new fact supervenes, for which defendant is responsible, which changes character of offense and together with the facts existing at the time constitutes new crime, acquittal or conviction of first offense not a bar to indictment for other crime, 216.
Conviction upon one indictment for felony, not capital, a bar to all other indictments for felonies not capital committed previous to such conviction, 225.
Indictment for stealing a "parcel" of oats sufficiently certain, 225.
When court will supply word omitted in indictment 237.
Error for jury to take weapons causing homicide into jury room, 256.
Defendant indicted for making counterfeit coin is entitled to only three peremptory challenges of jurors under sec. 819, Rev. Stats., 276.
Judge telling jury to sign verdict, no part of "charge" required by statute to be in writing, 316.

CUSTOM.
[See USAGES AND CUSTOMS.]

DAMAGES.
In action by widow of locomotive engineer for death of husband, 34.
Loss of Profits in Actions for Non-Delivery; article from *Law Times*, 61.
On breach of contract for work and materials, 75.
Where land is reclaimed from an invalid sale, as, for instance, by a person lately under disability, and the land has depreciated in value since the invalid sale, the measure of restitution to be made by the reclaimant is not the purchase money he received, but the purchase money paid by the party from whom the land is reclaimed. Aiken v. Settle, 446.

DAYS.
[See DIES NON JURIDICUS.]

DECLARATIONS.
[See EVIDENCE; CRIMINAL EVIDENCE.]

DECOYS.
[See, also, BURGLARY.]
The employment of decoys condemned, 299.

DEDICATION.
Purchaser of land subject to deed of trust, no power to dedicate land so as to affect purchaser at sale under trust deed, 375.

DEEDS.
[See, also, VENDOR AND PURCHASER.]
Coal and other minerals may be conveyed like other real estate, 376.
Land was conveyed by A to B for his life, and, after B's death to B's children, if he left any, otherwise to C. The deed provided that the land should not be conveyed by B, or sold for his debts. *Held*, that these conditions were void. McCleary v. Ellis, 389.
Condition in deed giving life estate, 475.
Local Option in a Novel Form (validity of conditions in deeds forfeiting land conveyed, if allowed to be used for sale of intoxicating liquors); article by Hon. J. O. Pierce, 501.

DEMURRER.
[See PLEADING AND PRACTICE.]

DEPOSITIONS.
[See PLEADING AND PRACTICE.]

DESCENT.
Mother of bastard can not inherit his estate, 225.
Legitimacy of heir may be contested notwithstanding intestate's recognition of his legitimacy, 319.

DESIGNER.
[See CONTRACTS.]

DIES NON JURIDICUS.
Statute requiring that on Thanksgiving day "all persons shall abstain from every kind of servile labor and vain recreation, works of necessity and mercy excepted," service of civil process upon that day is void, 224.
New Years day in Texas is not, 579.
Undertaking for bail entered into on Sunday, valid, 379.
Award made on Sunday void, 386.
Sunday liquor law (Conn.) does not include inns and boarding-houses, 395.

DIRECTORS.
[See CORPORATIONS.]

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[See RIOT.]

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[See MARRIAGE AND DIVORCE.]

DOMICIL.
[See, also, MARRIAGE AND DIVORCE.]
Domicil; article by Henry Wade Rogers, Esq. 421.

DONATIO MORTIS CAUSA.
[See WILLS.]

DOWER.
[See HUSBAND AND WIFE.]

DURESS.
[See MORTGAGES.]

EASEMENT.
Lateral support of land; liability, 236.

ELECTIONS.
[See, also, CONSTITUTIONAL LAW.]
One not an elector of the State is ineligible to hold a public office therein. But where such a person receives a plurality of votes for an office, he will be eligible if his disability be removed before the commencement of the term of office to which he is elected. State v. Trumpff, 8.
A city charter provided that persons elected to city offices should enter upon their duties upon the third Tuesday in April, but that they should have ten days after notification of their election in which to to qualify, and that any office should not be deemed vacant until the expiration of that period. At an election held April 6, G, an alien, received the highest number of votes. The votes were canvassed April 12, and on April 13 he was notified of his election. He was admitted to citizenship on April 21, and on the same day filed his official bond. *Held*, that G was entitled to the office. Id.
Liability of Election Officers to Actions for Neglect of Duty; article from *Irish Law Times* 141.
Election Ballots; Mistakes in Names of Candidates, 301, and see 339.
At an election where the regular judges of election fail to attend or refuse to act, and two boards are elected by the bystanders at different times, but both are elected before eight o'clock in the morning: *Held*, that both are elected prematurely; but that the one last elected and last organized before eight o'clock in the morning (a majority of the electors present at the election and organization participating therein), will be deemed to be the legal board, unless something else transpires to render it illegal. Kirkpatrick v. Vickers, 489.

EMINENT DOMAIN.
Land taken for public use; liability of owner for subsequent betterments, 257.
The diversion of a private watercourse by a municipal corporation for the purpose of general drainage, at the instance and with the acquiescence of the owners, is not an exercise of the right of eminent domain, nor a taking of private property for public use without compensation. Murphey v. Mayor of Wilmington, 427.

EQUITY.
[See also INJUNCTION.]
Will relieve where policy of insurance has been surrendered, insured being mistaken as to its being forfeited, 376.

EQUITY—Continued.

Equity will interpose to prevent a multiplicity of suits; but multiplicity does not mean multitude, and an injunction will not be granted where the object is to obtain a consolidation of actions, or to save the expense of separate actions. Murphey v. Mayor of Wilmington, 427.

Power of equity to restrain suits in another State, 453.

Has no jurisdiction to enforce lien of taxes, 455.

Will not enforce agreement of doubtful propriety, 455.

Will not reform deed executed through mistake, when, 515.

EQUITY PRACTICE.

[See PLEADING AND PRACTICE.

ESCAPE.

[See, also, BREAKING JAIL.]

Prisoner confined in jail under a void warrant, may liberate himself by breaking out; and escape of other prisoners in consequence thereof, does not render him guilty of any crime, 386.

ESTOPPEL.

[See, also, JUDGMENTS AND DECREES; MASTER AND SERVANT.]

Estoppel in Attachment Suits; article by Hon. J. O. Pierce, 481.

EVIDENCE.

[In criminal cases, see CRIMINAL EVIDENCE.]

Handwriting.

Letterpress copy of letter not admissible for purpose of comparison of handwriting, 17.

Comparison of handwriting can not be made with photograph of handwriting, 378.

Evidence of expert as to, 497.

Law and Fact.

Question of fraud for the jury, 54.

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Pay roll; when and how admissible in actions by subcontractors against their employers, 156.

Record of conviction upon indictment for adultery. evidence in subsequent suit for divorce brought against defendant by his wife, both of the marriage and of the adultery, 224.

Books of original entry of a tailor admissible, though charges are made after work is cut and delivered to journeyman, but before it is completed, 224.

It was disputed whether A was to receive from B $1.90 or $2 per cord for cutting his wood. *Held*, that evidence that B let contracts to other parties for $1.90 a cord was inadmissible, 240.

As a general rule, a mere preponderance of evidence, however slight, must prevail in civil cases. Hill v. Goodyear, 288.

An exception to this rule has been made in actions for libel or slander, where the defendant relies in justification on the truth of the defamatory charge. Id.

In other civil cases involving issues charging or implying crime, the general rule of the preponderance of evidence prevails; but the presumption of law in favor of innocence, and evidence of good character, if produced, must be taken into consideration by the jury in ascertaining on which side the preponderance exists. Id.

It is not the preponderance of evidence in relation to particular facts in the cause, but the preponderance of the entire evidence on the issues joined, weighed in connection with the presumption of law in favor of innocence, which should prevail in such a case. Id.

Judicial notice of city ordinance, 296.

Hearsay Evidence; article from *Law Times*, 401.

Books of account, 495.

Entries on slate, 474.

Admission of irrelevant testimony is cured by its withdrawal, 494.

Judicial notice of commerce in other States, 496.

In action for wrongfully causing death are declarations of deceased admissible? Query 18; answer 38.

Opinion Evidence. See, also, *Handwriting.*

Roman Catholic priest may testify as an expert as to the sanity of person, when, 99.

Evidence of experts, 157.

The value of expert testimony, 396.

Parol to Vary Writings.

Where minutes of proceedings of city council are ambiguous, they may be explained by parol, 256.

Contemporaneous oral agreement to vary deed not admissible, 315.

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Presumption.

As to deeds not produced, 178.

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Wife not competent witness in divorce proceedings in Mississippi, 36.

Testimony for purpose of establishing declarations of witness, that he is interested in event of the suit, not admissible, 95.

Grand juror competent to testify as to statement of prosecutor in case before grand jury, 138.

If subscribing witness to instrument deny his signature, it may be proved by other testimony, 225.

Credibility of children as, 314.

Testimony of witness, who by mistake was not sworn, inadmissible, although at time of giving his testimony he thought he had been sworn, 387.

The mode of proceeding to ascertain the competency of a witness is discretionary with the court. Therefore, a witness, objected to on the ground of want of religious belief, may be examined on the *voir dire*, before evidence of witnesses to sustain the objection has been heard. Arnd v. Ammling, 387.

Action against executor; Illinois statute as to witnesses construed, 473.

Credibility of witnesses, 516.

Evidence of young children not regarded in divorce proceedings, 53.

Competency of parties as, 377.

In action for divorce, wife not competent witness against husband as to acts of cruelty, 478.

EXECUTIONS.

If a person whose goods are by his fault intermingled with those of an execution debtor, has notice of the levy, the burden is on him to make the separation. Franklin v. Gummersell, 132.

Bank-bill may be attached and sold under, 225.

Levy on bulky articles, how made, 275.

Sale of mortgaged goods on execution; right to possession, 417.

Equitable rights liable to execution. Query, 238; answer, 278.

EXECUTORS AND ADMINISTRATORS.

Power of executor over debts of testator, 53.

Liability of co-executors for acts of each other, 216.

A probate court has no jurisdiction to issue letters of administration on the estate of a person who afterwards turns out to be alive, and its acts in doing so are void *in toto*. D'Arusmont v. Jones, 253, and, see, 442.

Revival of debt against administrator; indorsement of payments, 412.

Can administrator maintain action on judgment recovered by intestate without reviving it? Query, 283; answer, 487.

EXEMPTIONS.

[See HOMESTEADS AND EXEMPTIONS.]

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[See EVIDENCE.]

FALSE PRETENSES.

Proof of other acts of like character on indictment for, 154.

Falsely representing oneself to be a "storekeeper" amounts to, 359.

Requisites of indictment for, 476.

FINDERS.

The rights and liabilities of finders, 79, 460.

A person finding property on the highway, and knowing the owner from marks on it or otherwise, but not restoring it to him, is guilty of a felonious taking, 240.

One who finds lost goods which bear no marks of their ownership, and who does not know the owner, is not bound to exercise diligence in finding the owner, and is not guilty of larceny in retaining the goods, 379.

FIRE ARMS.

[See, also, NEGLIGENCE.]

No defense to carrying concealed pistol, that it was to be used in school exhibition on another day, 313.

Discharging gun at wild fowl, with warning that report would injuriously affect the health of a sick person in the neighborhood, indictable, 387.

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Covenant as to landlord's fixtures; implied covenant as to trade fixtures; underlease, 74.

Gas fixtures and mirrors are not, 75.

When machinery in factory fixtures as between vendor and vendee, 216.

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Of indorsement of promissory note can not be ratified, 17.

Of certificate of record of deed, 157.

By adding to genuine instrument; variance, 258.

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Possession as Evidence of Fraud; article by M. M. Cohn, Esq., 21.

The Shrewd Man of Business and the Courts of Commercial Cities; article by E. McGinnis, Esq., 203.

Rescission of written instruments when not granted, 315.

Setting aside judgments regularly rendered for fraud, 397.

Unnecessary affidavit brings case within principle of the maxim: "*Clausulæ inconsuetæ semper inducunt suspicionem*," 398.

Rule against catching bargains not restricted to case of expectant heirs, but extends to all cases in which unconscientious and unfair advantage has been taken, 410.

FRAUDULENT SALES AND CONVEYANCES.

Property exempt from execution not susceptible of fraudulent alienation, 59.

A sale unaccompanied by immediate delivery is void as to creditors, though delivery be made before levy by the creditors. Franklin v. Gummersell, 132, with note by Thos. W. Peirce, Esq., 134.

Declarations of grantee as to nature of conveyance inadmissible, 296.

Mere indebtedness at the time is not sufficient to render settlement fraudulent in law, if the donor retains property sufficient to discharge his debts, 337.

To impeach a conveyance of land by a father to his children as fraudulent, complainant must prove that he was a creditor at the time it was made, and that the grantor was then insolvent, 337.

A subseqtent creditor can not question a voluntary or fraudulent disposition of property by his debtor, not intended as a fraud against him. The same principle applies to the disposal of property by a corporation. Graham v. Lacrosse, etc., R. Co., 464.

Innocent vendee from one fraudulently selling protected, 472.

Order of liens on setting aside, Query, 158; answer, 198.

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When fund not subject to, 517.

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[See JURY; OFFICES AND OFFICERS.]

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[See BURIAL.]

GUARDIAN AND WARD.

[See INFANCY; SURETYSHIP AND GUARANTY.]

HABEAS CORPUS.

Voidable or excessive [sentence relieved against by appeal, not by, 59.

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[See EVIDENCE.]

HIGHWAYS.

[See, also, TRESPASS.]

Court has no jurisdiction over a prosecution for obstruction of highway, that not being either a felony or a high crime and misdemeanor, 224.

HOMESTEADS AND EXEMPTIONS.

[See, also, HUSBAND AND WIFE.]

Under the Missouri Homestead Act, a by wife obtaining a divorce does not lose her homestead right previously obtained by filing her claim according to its provisions. Blandy v. Asher, 50.

Desertion by the husband, leaving his family still occupying the homestead, is not an abandonment of the homestead. Id.

An unmarried woman living upon premises owned by her, and having with her and providing for two children of a deceased sister, is a "head of a family," 95.

A sewing machine and piano are articles of "household furniture," 237.

What is "starting to leave the State" under Iowa Code, 453.

Is judgment by surety on note given for purchase price of property, against purchaser after payment by surety, a judgment for the "purchase price" of the property? Query, 56; answer, 98.

HOMICIDE.

Murder in second degree, what is, 15.

The identity of A, a Chinaman, was in question on his trial for murder. A witness testified that he knew A, and that he had certain tattoo marks on his right arm. The court thereupon compelled A, against his objection, to exhibit his arm in such a manner as to show the marks to the jury. *Held*, that the action of the court was not in violation of that clause of the Constitution which declares that no person shall be compelled in any criminal case to be a witness against himself. State v. Ah Chuey, 111; criticism of this case, 156, and see 219.

The DeJarnette Case, 258.

Justification; burden of proof; *quantum* of proof, 337.

Requisites of indictment, 516.

Evidence of threats, 516.

HUSBAND AND WIFE.

[See, also, CRIMINAL CONVERSATION; MARRIAGE AND DIVORCE.]

Contracts and Transfers of Property.

How wife must "concur in and sign" mortgage of homestead, 16.

The Law as to Married Women in Missouri; article by Hon. David Wagner, 41.

Married woman's separate estate; general engagement; after-acquired property, 74.

Parol ante-nuptial contract to settle property valid and binding, 414.

A woman hired a dwelling-house and took possession, agreeing to pay a specified rent. Thereafter she married, continued to occupy the house, her husband not living with her, but visiting her frequently, and occasionally remaining with her over night. *Held*, he was not liable for rent of house accruing after marriage, 415.

Debt of married woman, which she is not bound to pay, a sufficient consideration to support obligation under seal, by a third person, to pay it, 415.

Infant *feme covert* may disaffirm contract when, 438.

Dower and Curtesy.

Creditors filed bills to enforce debts against real estate which had been paid for by the husband, but with the title conveyed to a third party. The wife insisted that she was entitled to the property under a parol trust, as conveyed to the third party for her benefit. The husband died pending the litigation. The wife then claimed dower by an amended pleading, in the event she failed to establish the trust. *Held*, that the trust could not be set up against creditors, not being in writing or registered; but that she was entitled to her dower, and was not estopped from asserting her right to it, by having claimed and contended for the beneficial interest under the assumed parol trust. Martin v. Lincoln, 5.

Dower interest before assignment, not subject to execution, 477.

Rights of woman to dower who marries again through mistaken idea that husband was dead? Query, (10 Cent. L. J. 457), answer, 18.

Miscellaneous.

Rights of second wife in lands of deceased husband; Indiana statute construed, 77.

Lands given by government to husband or wife during coverture, are separate estate of spouse to whom given, 224.

Husband can not be convicted of maliciously destroying property of wife; wife not an "other person" within statute, 418.

Married woman may be convicted when active in crime, 451.

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The law of ice and icemen, 339, 347.

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What contracts with, must be in writing; United States statute construed, 316.

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When guardian not allowed for maintenance of ward, 96.

Purchase of land by guardian for ward; former entitled to credit for purchase money, 377.

Final settlement of estate, not conclusive as against ward, 377.

Infant's deed without consideration void, 379.

An estoppel *in pais* is not applicable to infants, and a fraudulent representation of capacity to contract is not an equivalent for an actual capacity, 438.

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Equity cannot restrain sheriff's sale on ground that debtor has no interest in property, 17.

Mandatory injunction will be issued when property is to be preserved, restraining defendant from ceasing to act, 117.

Publication in newspaper of proceedings on interlocutory application to restrain an advertisement, not a breach of undertaking not to issue the offensive advertisement, 117.

Will be granted to restrain advertisement injurious to trade, 176.

To advertise a caution to the public against a person's goods offered for sale on the ground that they are not what they pretend to be, and to state that he is foisting a bad article upon the public, is a libel which, if not justified, will be restrained by injunction. Thorley's Cattle Food Co. v. Massam, 245.

A person is not entitled to use another's name in describing his goods in trade, though his own name is the same or he has assumed the same name, if by so doing he in fact represents that his own goods are from the other's manufactory. Id.

"Thorley's Food for Cattle" was a condiment made, according to a particular recipe not invented by Thorley, first by Thorley, and afterwards by his executors, at Thorley's works, but it had not become an article of commerce, like "Liebig's Extract of Meat." Subsequently a company, called J. W. Thorley's Cattle Food Company, was started, and made a condiment very nearly identical with that made at Thorley's works, and sold it in packets closely resembling those used by Thorley and his executors. *Held*, that the name assumed by the company, and the manner in which they sold their goods, showed an intention, and was in fact calculated, to mislead the public into believing that the company were successors in Thorley's business, and that their goods were made at Thorley's works; and that the company must be restrained by injunction. Id.

Circumstances under which equity will not interfere to restrain threatened injury to real property, 318.

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[See RECORDS.]

INSURANCE LAW.

Accident.

Liability of accident insurance companies; article from *Law Times*, 265.

Fire.

Policy on personalty and realty; false representations in regard to realty not several, and avoid both, 35.

Application for policy may be written in lead pencil, 95.

Premises were held under a lease containing a covenant to repair, under which the tenant was liable to repair injury by gas. An explosion of gas damaged the premises. The tenant recovered compensation from the party who caused the explosion, and repaired the premises. The landlord had received payment under a fire policy, and the insurer, on discovering that the premises had been repaired, sued for the return of the money so paid. *Held*, that the plaintiff was entitled to recover. Darrell v. Tibbetts 169.

INSURANCE LAW—Continued.

Action by insurance company against one negligently causing fire; joinder of parties, 275.

Under a policy of fire insurance on a ship, the insurer is not liable to general average on the cargo, although the damage was incurred by submerging the ship in order to extinguish the fire. Merchants', etc. Trans. Co. v. Associated Firemen's Ins. Co., 328.

Insurance on goods held "in trust or on commission" effected by agent; suit by principal for money had and received, 338.

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What evidence material as to health of deceased being impaired by drinking, 96.

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Waiver; misstatements in application; errors of medical examiner imputable to company; confidential communications; physician and patient, 353.

Payment of premium by stranger does not bind company, 355.

Assignment of interest in life policy, 357.

The association known as the "Merchants Exchange Mutual Benevolent Society of St. Louis," *held* to be an insurance company, and within the laws of Missouri concerning life insurance, and *held*, *further*, not to be exempted by the legislation of this State from the obligation to comply with the general insurance laws. State v. Merchants Exchange Mut. Ben. Society, 391.

Non-payment of premium invalidates policy, 473.

Certificate of membership; construction of charter, 477.

Marine.

One who has made an oral agreement with the owners of a vessel for her purchase, has an insurable interest therein. Amsinck v. American Ins. Co., 205.

In an action upon a marine policy, the declaration alleged that the defendants insured a vessel "on a voyage at and from New York, via Bangor, to St. Michaels, Western Islands; and while proceeding on said voyage said ship was wrecked and totally lost by the perils and dangers of the sea;" and the answer admitted that the defendants insured the ship for that voyage, but contained a general denial of each and every other allegation in the declaration. The plaintiff introduced evidence to prove that the vessel was prosecuting the voyage set out in the declaration, and named in the policy. *Held*, that under the pleadings the defendants were entitled to rebut and control the plaintiff's evidence by showing a deviation from that voyage through unreasonable delay at Bangor. Id.

Construction of policy; boat to be "seaworthy" must be furnished with cables and anchors, 315.

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Usury as a defense must be proved; illustration, 195.

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Statutory rate; interest after maturity of contract, 258.

Charging a Trustee or Executor with Interest; articles from *Solicitors Journal*, 285, 306, 324, 342.

The Rate of Interest; article by Albert Young, Esq., 366, but see, 439.

Claims to Interest on Principal; article from *Law Times*, 441.

Where there is a contest over a will, interest will be afterwards allowed on legacy given by it, from day proceedings to contest were ended, not from year after the testator's decease, as under general rule 459.

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"Breaking and entering," 198.

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"Extreme cruelty," 319.

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INTOXICATION.
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Res adjudicata; when findings in one suit binding in second suit 137.
The judgment in an action instituted by the holder of negotiable paper against the indorsers, is not a bar to a subsequent action by the holder against the maker, the latter not having been made a party to the first action, nor notified of its pendency. Brooklyn City, etc., R. Co. v. Bank of the Republic, 330.
An estoppel, arising out of the judgment of a court of competent jurisdiction, is equally conclusive upon all the parties to the action and their privies. It may not be invoked or repudiated at the pleasure of one of the parties as his interest may happen to require. Id.
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[See also DEEDS.]
Complaint charged defendant with unlawfully selling on a day given, "without license first had and obtained." *Held*, that these words sufficiently charged the want of license to sell when the sale was made, 217.
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Divorce and Alimony. [See, also, HOMESTEADS AND EXEMPTIONS.]
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What is "cruel and inhuman treatment," 16.
A was married to B in England, both parties being domiciled English subjects. A afterwards went to the United States in order to avoid his creditors, but it was not proved that he had abandoned his English domicil. He obtained a divorce in the State of Kansas on the ground of his wife's desertion, and was afterwards married in Kansas to C. *Held*, that the divorce in Kansas could not be recognized in this country, and that therefore A had been guilty of bigamy, and B was entitled to a decree for dissolution of her marriage with A. Briggs v. Briggs, 46.
Is a Divorce Granted in the United States Valid in England? article by J. F. Kelly, Esq., 201.
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[See HUSBAND AND WIFE.]

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[See LIENS.]

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Covenant in conveyance of mineral in the ground by grantee to grantor, to pay latter a certain sum per ton for mineral removed, not a collateral covenant, but a covenant to pay purchase money for sale of all mineral in manner specified, 376.

MORTGAGES.
Of Personalty
Possession as Evidence of Fraud; article by M. M. Cohn, Esq., 21.

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Mortgage of subsequently acquired property, 336.

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Erroneous description; effect of, 356.

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Purchase of mortgaged property; effect of purchase on lien when its character is changed, 315.

A gold miner having confessed to taking gold intrusted to him to refine, gave while under arrest a mortgage on his property for the amount: *Held*, not void on ground of duress, 319.

Mortgage containing power to appoint receiver on default without notice, *ex parte* appointment by court void, 414.

Immunity from taxation not a "franchise," within mortgage on railroad, 494.

Rights of subsequent judgment creditor not a party after foreclosure of mortgage. Query (10 Cent. L. J. 467); answer, 18.

Right to recover balance of mortgage debt on foreclosure. Query, 18; answer, 38.

Foreclosure; lien. Query, 138; answer, 158, 198.

MUNICIPAL BONDS.

[See MUNICIPAL INDEBTEDNESS.]

MUNICIPAL CORPORATIONS.

[See, also, NEGLIGENCE.]

City ordinance prohibiting gas company from selling its franchise to any other company, violated by agreement with another company to divide city between them, 35.

But such a violation not ground for forfeiture of charter, 35.

By-law prohibiting person without license from carrying offal and house dirt through any of the streets, not in restraint of trade, and valid, 225.

Under power to "suppress and restrain" bawdy houses, no power to punish the keeping of them, 358.

Power of cities over private hospital; Indiana statute construed, 498.

MUNICIPAL INDEBTEDNESS.

Bonds void for want of power to issue them, void in hands of *bona fide* holder, 36.

County bonds; condition precedent to suit; false statements made to voters, 473.

MURDER.

[See HOMICIDE.]

NAMES.

[See, also, INJUNCTIONS; PATENTS, COPYRIGHTS AND TRADE-MARKS.]

Is identity of name evidence of identity? 140.

"Junior" no part of a man's name, 224.

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[See BANKS AND BANKING.]

NATURALIZATION.

[See, also, ELECTIONS.]

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NEGLIGENCE.

[See, also, CARRIERS.]

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By engineer in jumping from engine in emergency, 34.

One inviting dangerous agent on his premises can not recover for injury caused thereby; owner of warehouse employing locomotive to haul cars on his premises, barred from action for fire resulting therefrom, 53.

Pedestrian not required to stop and listen when approaching railroad track, 96.

Under Massachusetts Sunday laws one who, after driving out on that day to attend a funeral, has received injuries through a defect in highway, while deviating upon his return for purpose of enabling a companion to make a social call upon a sister-in-law whom she had not called upon for several years, can not maintain an action against city, 217.

Plaintiff, on a Sunday, was driving along a public highway, when defendant's dog jumped at the head of horse which ran and overturned the buggy, occasioning injuries. *Held*, that though he was traveling in violation of the Lord's Day Act, it would not defeat his right of recovery, 218.

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By owner of lands adjoining railroad, when cattle guards are defective, 275.

Riding on front platform of horse car, 312.

Master and Servant. See, also, LAW AND FACT.

Detective in employ of railroad and engineer not fellow servants, 55.

Construction of Iowa statute giving action against master, 55.

Duty of railroads towards servants to provide safe cars, 95.

Car inspector and brakeman not fellow-servants, 95.

The law of; criticism of Mr. Justice Bramwell on the proposed alteration of the law, 123.

Liability of railroad for unauthorized acts of servant, 177.

Master liable for injury to servant caused by defective machinery, though negligence of co-servant contributes, 155.

Liability of master for injury caused to servant by fellow-servant, 279, 498.

Liability of master for act of servant in leaving water tap in lavatory running, 399.

Liability of railroad for injury to servant through unsafe structure, 476.

Miscellaneous.

Use of firearms; responsibility for injury caused by firing salute, 38.

Collisions on the highway, 53.

Liability of Telegraph Companies for Negligence in Construction of Lines; article by W. H. Whitaker, 121.

For a breach of a duty enjoined by statute, and causing damage, an action lies by the party for whose benefit the duty was imposed. Therefore, where a statute required all buildings in a city to be provided with ladders and fire-escapes, and a house which A rented of B, and in which he and his family resided, was not so provided, and A's wife was burned to death: *Held*, that B was liable to A in damages. Willey v. Mulledy, 191.

The mere fact that A occupied the house, and did not examine whether it was provided with a fire escape, would not be a bar; neither would it that A, knowing that the fire-escape was not provided, continued to occupy it. He was entitled not only to rely on the duty being performed, but also to a reasonable time in which to find another house. Id.

That possibly, had the fire-escape been provided, the loss of life might still have happened, would not prevent the action. Id.

Trustees and directors of savings banks are bound to the exercise of skill and judgment as well as care and diligence. The remarks of Sharswood, J., in Spering's Appeal, 71 Pa. St. 11, that directors "are not liable for mistakes of judgment, even though they may be so gross as to appear to us absurd and ridiculous, provided they are honest," condemned. Hun v. Carey, 307.

A savings bank commenced business in 1867. At the beginning of 1873 its total expenses were over $5,000 more than its income. Its depositors numbered 1,000, representing $70,000, and its assets consisted of $13,000 in cash and a number of mortgages on real estate. Shortly afterwards the directors, in order to inspire confidence and attract depositors, resolved to erect a new banking house, and for this purpose purchased a lot for $29,250, and bound themselves to erect thereon a building costing $27,000. To pay for this building most of the money was taken and some of the mortgages sold. In consequence thereof the bank became unable to continue, and was placed in the hands of a receiver. *Held*, that the jury was justified in finding the directors guilty of a want of that skill and prudence which the law requires. Id.

Liability of owner for injury received in dangerous passage way, 313.

Action against gas company for death caused by escaped gas, 339.

A had constructed a boom in the Detroit River, within which ice was forming, which he intended to cut and sell when deep enough. It had frozen to the depth of six inches, when B's boat, which was running in the river, came so near the boom that her swell broke up the ice, and the weather thereafter continuing mild, A was unable to fill his ice houses. There was room in the river for the boat to have passed without injury." *Held*, that B was liable for the damages. *Held further*, that the damages were not to be restricted to the value of the ice on the day of the injury. People's Ice Co. v. The Excelsior, 347.

Negligence must be proved; illustration, 439.

NEGLIGENCE—Continued.

Municipal Corporations.

An action will not lie against a county for injuries occasioned by the negligence of its servants or agents in respect of the performance or non-performance of their duties. Hollenbeck v. County of Winnebago, 11.

In an action for damages for the death of a workman killed by the falling of a court house while in process of erection, the declaration averred that "whereas the defendants, on, etc., were possessed and had the supervision and control of a certain building, * * * which building was then and there being erected by and under the supervision and control of the defendants, etc., * * * * who ought to have kept the same in good condition while the same was being so erected; * * * * yet the defendants, not regarding their duty in that behalf, while they were so possessed and had the supervision and control of the erection of the building:" *Held*, that it did not sufficiently appear from these averments, in order to charge the individual defendants, that they had exclusive control in the furnishing of materials, selecting the plans and erecting the buildiug, and such exclusive control was essential to fix their liability. Id.

Liability for obstructions placed on streets by lot owners, 15.

Not liable for extending street so as to include an existing nuisance, 16.

Liable for neglect to keep streets in repair, 16; for obstructions in streets, 515.

Liability of city for damages caused by bear show in streets, 55.

Liability of, for injuries suffered from acts of crowd in streets, 76.

Liability of city for injuries caused by dog kept on poor farm, 76.

The general rule of law that where the work contracted for is not a nuisance *per se*, the employer of the contractor is not liable to a third person for an injury resulting from the wrongful act or omission of such contractor or his servants, does not apply to municipal corporations, so as to relieve them of the duty of keeping their streets in a safe condition for travel; and where a city contracted with another for the putting in of a system of waterworks, during the progress of which work the plaintiff's intestate was killed by the result of a blast made by the contractor: *Held*, that the city was liable to respond in damages for such injury. City of Logansport v. Dick, 148; with note, 153.

The construction of water-works by a city is not a nuisance *per se*, 148.

A city which from time immemorial has owned a tract of land within its limits, inclosed by fences and used as a common place of public resort for the recreation of the people, and traversed by diverse foot paths which it has made and kept in repair, and to which access is gained from the streets through the openings in the fences, is not liable to a foot passenger for injuries received by him from collision with a sled upon one of said paths upon which the city has permitted boys and young men to coast, and which it has fitted for such coasting by building a bridge across it at an intersecting path, and by turning water from its water pipes upon it to freeze and render it slippery. Steele v. City of Boston, 193.

Liability of towns for defective highway under Massachusetts statute, 217.

A county is not liable in damages to a person injured by reason of the negligent construction of a court house, or by its negligence in not lighting an unguarded and dangerous stairway leading to a courtroom. Kincaid v. Harden County, 227.

Liability of city for failing to remove water plug from street from which injury happened, 276.

Duty of city as to swing bridge, 475.

Liability of county for unsafe bridge, 477.

Railroad Companies.

Liable to land owner for damages from drains constructed by it, 36.

The evidence showed that immediately after the passage of defendant's train fire sprang up on its right of way, adjoining plaintiff's premises, and after burning there for some hours, was driven by the wind to plaintiff's premises and destroyed his property; that no fire was visible along the railroad until after the train had passed; that the wind had been blowing all day, and it was very dry. *Held*, that this was sufficient proof from which the jury might infer that the fire wrs occasioned by sparks or coals from the defendant's engine, and that this made out a *prima facie* case that the fire was the result of the carelessness or negligence of defendant's servants, and was the proximate cause of the damage to the plaintiff. Kenney v. Hannibal, etc. R. Co., 172.

NEGLIGENCE—Continued.

An instruction authorizing a recovery for plaintiff, if defendant was negligent in permitting the accumulation of dry grass and other combustible matter on its right of way, to which fire was communicated by sparks or coals from its engine, and extended to plaintiff's premises, although the engine, machinery and spark arrester were of the most approved pattern and in perfect order, and competently and skilfully managed, is erroneous, where no issue as to such negligent accumulation of dry grass, or other combustible matter, is made by the pleadings or evidence. Id.

A railroad is not liable for damages resulting from the failure of its servants to extinguish a fire which they have discovered on its track, although it was caused by sparks or coals from its engine. Id. This ruling criticised, 174.

Liability of street railroad company for damages caused by removing snow from track, 154.

Not liable for injury caused by explosion of fog signal on track, 194.

Fence laws of Tennessee do not apply to, 275.

Averment that A was injured by being driven upon by defendant's street car not sustained by proof that he was, in attempting to escape from it, injured by another car, 296.

That car was driven at rate of speed forbidden by city ordinance, not conclusive proof of negligence, 296.

Negligence in failing to provide flagman at crossing or to ring bell, 312.

H, a car repairer of another railroad passing over defendant's track was requested by a car repairer of the latter to look at a car standing on defendant's track, and while attempting to comply with the request was killed by a freight train switched in the usual way and not coming very fast, striking the car which was being examined and driving it over him. There was nothing in the evidence to show that defendant was aware of the perilous position in which H had placed himself, or that if aware the injury could have been prevented. *Held*, that defendant was not liable. Hallihan v. Hannibal, etc. R. Co., 87.

Failure to ring bell or sound whistle at crossings, 96.

Liability of railroad for hogs which are running at large and stoned by employees, 317.

Owing to defendant's negligence, petroleum being carried on a railway train, burst its tanks, was set on fire, flowed into a brook, and was carried by the water to and ignited the complainant's barn, at a considerable distance. *Held*, that defendant was liable, 319.

Liability of railroad for injury to passenger caused by overcrowded platform at depot, 337.

Railroad leaving freight car across track opposite depot and passenger passing under it is injured; liability of company, 337.

Right of passenger to act on invitation of conductor, 337.

Duty of engineer to reverse engine to prevent collision with one on track, 398.

NEGOTIABLE AND ASSIGNABLE PAPER.

Maker of note has right to ante-date it, 54.

Two bills of exchange, belonging to the plaintiff at Chicago, were indorsed for collection to a bank at Atchison, Kansas, and by said Atchison bank to a bank at Kansas City, Missouri, and by the latter to defendant, a bank at Hutchinson, Kansas: *Held*, that they remained the property of plaintiff, all the indorsements being restrictive. First Nat. Bk. of Chicago v. Reno Nat. Bk., 145.

An indorsement on a bill of exchange, directing the drawee to pay to another, "on account of" the indorser, or "for collection," is a restrictive indorsement, the effect of which is to restrict the further negotiability of the bill, and to give notice that thes indorser does not thereby give title to the bill, or to its proceeds when collected. Id.

Although there may be no privity between the owner of the bill and the last indorsee, yet, if the latte collects the bill, he is bound to pay the proceeds to the owner, and the latter may recover in *assumpsit*, on the ground that the defendant has property in his possession which belongs to the plaintiff, and refuses to pay the same over. Id.

Where one entitled to notice of dishonor of a negotiable instrument resides within the same post-office delivery as the one whose duty it is to give the notice, it must be personally served or left at his residence; it is only where he resides nearest to or is accustomed to receive his mail at another post-office that notice is good by mail. Forbes v. Omaha Nat. Bk. 209.

Promissory note; presentment payment under mistake of fact 218.

NEGOTIABLE AND ASSIGNABLE PAPER—Continued.

Indorsement of note after maturity is drawing of new bill, payable on demand; to hold the indorser, demand and notice of non-payment essential, 296.

Delivery of note for collection; *bona fide* holder, 312.

The transfer, before maturity, of negotiable paper, as security for an antecedent debt merely, without other circumstances—if the paper be so indorsed that the holder becomes a party to the instrument—although the transfer is without express agreement by the creditor for indulgence, is not an improper use of such paper, and is as much in the usual course of commercial business as its transfer in payment of such debt. In either case, the *bona fide* holder is unaffected by equities or defenses between prior parties of which he had no notice. Brooklyn City, etc. R. Co. v. Bank of the Republic, 330.

Where a negotiable promissory note, payable to bearer, has been lost or stolen without the fault or neglect of the owner, and is presented for payment when overdue, the party liable to pay it is bound by previous notice of the loss to inquire into the title of the *de facto* holder before payment. Hinckly v. Union Pacific R. Co., 343.

The Rights of Checkholders and Payees of Unaccepted Drafts; article by C. G. Tiedeman, Esq., 381.

When assignment restrictive; right of holder filling blank indorsement, 474.

A stipulation in a promissory note for the payment of reasonable attorney's fees destroys its negotiability. Jones v. Radatz, with note by M. A. Low, Esq., 512.

NEWSPAPER.

Stipulation by vendee of newspaper to pay "all outstanding liabilities" will not make him liable for damages for libel recovered against vendor in suit pending when the sale took place, 379.

NEW TRIAL.

[See APPEALS AND APPELLATE PROCEDURE.]

NEW YEAR'S.

[See DIES NON JURIDICUS.]

NOTARY PUBLIC.

Can a, who is both a stockholder and a director in a bank, protest paper belonging to bank? Query, 78; answer, 158, 198.

May notary present note at place formerly occupied by bank? Query, 317; answer, 398.

NOTICE.

[See, also, NEGOTIABLE AND ASSIGNABLE PAPER.]

Registration Laws.

A statute required the register of deeds to keep an entry book in which it was his duty to enter the date of deeds and mortgages left for registration, the names of the parties, the situation of the lands, etc.; and the instruments are afterwards recorded at full length in books provided for that purpose. A mortgage left for record was properly noted in the entry book, but in copying it into the record, the name of the mortgagee was omitted. *Held*, that this error did not defeat it as to subsequent purchasers, as the two books together supplied all necessary information. Sinclair v. Slawson, 68 and note, 70.

Recording deed of trust to secure loan of money does not create lien upon property till money paid, 316.

Not material whether deed is delivered to trustee before recorded, 317.

Notice by registration of deed. Query, 37; answers, 56, 78.

Purchaser not bound by notice of action in another sovereignty. Query, 418; answer, 498.

NUISANCE.

Powder magazine when a, 355.

Liability of railroad for nuisance caused by tracks crossing turnpike road in a manner to obstruct travel, 356.

OBSCENE LANGUAGE.

[See TRESPASS.]

OFFICES AND OFFICERS.

[See, also, ARREST; CONSTITUTIONAL LAW; ELECTIONS.]

Constitutional disqualification to hold office for not paying over money not confined to public officers, 35.

Suit for *mandamus* for office will not be determined after term of office has expired, 59.

"Official misconduct" means such misconduct as involves moral turpitude, 237.

Proceeds of property stolen from United States mails; jurisdiction of Postmaster-General, 238.

OFFICES AND OFFICERS—Continued.

If a sheriff, for the sake of obtaining employment, agrees in advance to render official services for a party, and to receive nothing unless party succeeds in his suit, he can not recover his fees without showing that defendant succeeded, 240.

Agreement made before election to divide salary, fees and emoluments of office of district attorney, consideration therefor being that plaintiff should use his influence to secure election of defendant, void, 240.

When an office is filled by "appointment by the Governor," the appointment is complete when the commission is signed, 256.

Failure to qualify in given time does not operate as vacation of appointment, 256.

Judicial officer not liable to civil action for damages at suit of person aggrieved; so long as he keeps within his jurisdiction, neither malice nor error will support action, 277.

No action at common law against sheriff for neglect to return execution; *aliter* under Indiana statute; construction of statute, 297.

Refusal to attend meetings implies resignation of office, 317.

Office impliedly resigned by election to another office, 317.

Intoxicatian not "misfeasance in office," 378.

Farming office of sheriff to deputy, to discharge duties of office and receive all emoluments in consideration of gross sum paid to sheriff, not prohibited in Virginia, 387.

A grand juror is not liable in damages for returning an indictment against another, even where he acts upon insufficient evidence, and with a malicious desire to injure the person against whom the indictment is found. Turpen v. Booth, 406.

Public officer holding moneys of different boards; mingling of moneys; default; rights of each, 456.

Validity of acts of officers *de facto*, 472.

Officer holding public funds not liable personally for costs of suit, 494.

Officer can not make return to magistrate not named in warrant, 514.

OFFICIAL BONDS.

[See SURETYSHIP AND GUARANTY.]

OPINION EVIDENCE.

[See EVIDENCE.]

PARDON.

A pardon by the president of one convicted of embezzlement in a Federal court restores the offender to his right as a voter in the State, 379.

Governor may annex to pardon condition that person pardoned shall leave State and never return; and if he violate terms of pardon, he will be remitted to former sentence even though it deprive him of life, 386.

PARENT AND CHILD.

[See, also, INFANCY.]

No obligation on children atcommon law to support needy parents, 256.

Liability of child for necessaries furnished parent; contract; evidence, 297.

Exception to rule that father is bound to maintain infant child, and no allowance will be made to him for this purpose out of his property, obtains where parent's estate is limited, while that of child is abundant, 452.

A man who takes a child of his wife by a former marriage into his family stands in the same relation to him as to his own children, 452.

When father liable for services of child, 515.

PAROL EVIDENCE.

[See EVIDENCE.]

PARTIES.

[See PLEADING AND PRACTICE.]

PARTITION.

Partition of lands between heirs of a father can not be ordered where petition alleges that one heir is alive and mother is pregnant by the father, 379.

By remainder-man can not be had during existence of life estate, 475.

Right to improvements on, 197, 218.

PARTNERSHIP.

Note given on completion and settlement of illegal business, by one partner therein to the other, for profits thereof, valid, 59.

PARTNERSHIP—Continued.

Insolvency; individual and partnership debts; proof of claims; priority, 136.

Payment of the Liabilities of Co-partners; article by W. L. Stonex, Esq., 221.

Construction of agreement of, 277.

Right to terminate agreement if partner "shall become intoxicated and neglect business," conditional in both events, and can not be exercised for dissipation only, 339.

Effect of death of one partner; powers and duties of surviving partner, 357.

Report of mercantile agency not evidence to charge one as partner, 397.

Party's conduct will not charge one as partner, unless creditor relied on it, 397.

Acceptance of draft by direction of agent of partner; powers of partners after dissolution, 455.

A and B entered into an agreement under seal, by which B was to loan A $5,000 for one year, or indorse his note for that amount for that time, and also indorse his notes to an additional amount not exceeding $2,000, if B thought such sums required for A's business. For this A was to pay B ten per cent. of his net business profits of the year, and two per cent. of his net profits for each $1,000 indorsed for him over said sum of $5,000; A also agreeing to conduct his business to the best advantage, and to keep accurate accounts thereof to be at all times open to B's examination. *Held*, that this did not constitute a partnership between A and B, either as between themselves or as to a third person. Boston, etc. Smelting Co. v. Smith, 211.

Capital advanced by one partner; interest, 476.

PASSAGE OF LAWS.

Veto of Governor when returned in time, 15.

Passage of city ordinance; what irregularities will not avoid it, 296.

PATENTS, COPYRIGHTS AND TRADE-MARKS.

A man and his name; articles from *Solicitor's Journal*, 3, 25, 81, 106.

Injunction to restrain use of name, 455.

Does the Infringement of the Terms of a Patent Constitute one Cause of Action? article by W. H. Whitaker, 41.

Injunction issued to restrain use of scroll work and words by manufacturer of wagons, 54.

Test of similarity of trade-mark; meaning of "calculated to deceive," 74.

Owner of trade-mark need not be manufacturer of article to which attached, 93.

"Tower Palace" not protected as a trade-mark, 179.

Similarity in trade-marks; injunction, 355.

A chromo-printed Berlin wool-work pattern is not a piratical copy of an engraving from the same design. Dicks v. Brooks, 368.

The object of Hogarth's Act was to protect the inventor of a design. The Acts 7 Geo. 3, c. 38, and 17 Geo. 3, c. 57, which extended protection to engravers working from designs made by others, did not give the engraver any right to the design, but protected his own art. Id.

Immoral book may be protected when, 379.

What is publication in "volume form," 379.

Trade name; advertisement; deception, 410.

Rubber for dental plates; celluloid not an infringement, 494.

Reissue by commissioner must be for same invention, 513.

PAYMENT.

Money paid under mistake of fact may be recovered back, 277.

Person who discounts forged instrument may recover back when, 277.

Payment in Something Else than Money: article by John F. Kelley, Esq., 361.

PHOTOGRAPHS.

[See EVIDENCE.]

PIGEONS.

Status of, in the criminal law, 387.

PLEAS.

[See PLEADING AND PRACTICE.]

PLEADING AND PRACTICE.

Amendments.

Sheriff's return may be amended after term, 478.

Answer; Plea.

An answer in abatement, not verified, may be struck out on motion for that cause, 316.

PLEADING AND PRACTICE—Continued.

In action for price of goods, plea by defendant "that before the commencement of this suit be fully paid the amount demanded to plaintiff's agent," etc., *Held*, not equivalent to averment that demand sued on was fully paid, 316.

Single plea can not be both answer and counterclaim, 316.

The Plea of Non-Damnification; article by Orlando F. Bump, Esq., 341.

Where, under Illinois statute, one is sued as guarantor of a note, and verifies plea in general issue by affidavit, this is admission of execution of note, and plaintiff need only prove execution of guaranty, 452.

Conduct of Trial.

Misconduct of judge in urging jury to come to agreement, 457.

Demurrer.

Not proper mode of raising objections to guardian's report, 452.

Depositions.

The Right to Take Depositions in Missouri; article by E. McGinnis, Esq., 63.

Depositions; form of certificate; admissibility, 257.

Equity.

Bill against two defendants charging separate individual frauds, multifarious, 17.

Forms of Action.

A brought *assumpsit* against B and others whom A claimed to be co partners of B, for goods furnished them nnder a sealed agreement executed by A and B. *Held*, that the action would not lie. As against B, A's claim rested on a specialty, and as B alone could not be made liable in *assumpsit*, so B in company with others could not be held in *assumpsit*. Boston, etc. Smelting Co. v. Smith, 211.

Jury.

The right of trial by jury can not be taken away by the legislature; and the jury the accused is entitled to is one from the vicinage of the alleged offense. Swart v. Kimball 71.

Verdict arrived at by jury by lot, void, 295.

Verdict set aside, because party to cause entertained one of the jurors at a friend's house, 387.

Jury may, from their knowledge of the business of society and the value of labor, in an action for work and labor, find a verdict for the price of the work done, notwithstanding there is no evidence of the worth of labor at the time and place the work was performed, 387.

When juror incompetent because of opinion formed, 453.

Miscellaneous.

No notice required of motion for new trial, 295.

On May 13, 1880, an order was entered in the District Court of Cowley County, adjourning the court until Monday, May 17th. That was the day fixed by law for the term of the District Court of Sedgwick County, a county in the same judicial district. That term commenced on that day, and the regular judge being absent, a judge *pro tem.* was elected, who held court on the 17th and 18th. The regular judge was present in Cowley County, and assumed to hold court pursuant to adjournment on the 17th and 18th, and at the time the District Court of Sedgwick County was in session. *Held*, that such order of adjournment was void; that the term of the District Court of Cowley County was, on those days, suspended or closed by the commencement of the term in Sedgwick County; and that the proceedings on those days in Cowley County were extra-judicial and void, and that a defendant tried and sentenced upon those days was entitled to a discharge upon *habeas corpus*. *In re* Millington, 447.

Plaintiff may dismiss his action without prejudice when, 476.

Service of process, 497.

If one instruction of a number is erroneous, court may refuse them all, if offered as a whole, 515.

Parties.

Married woman may bring suit for infringement of patent without joining husband, 136.

The Right of a Stranger to Maintain an Action upon a Contract; article by C. G. Tiedeman, Esq., 161.

Can foreign executor bring suit on note in his own name? Query, 278; answer, 317.

Referee.

Report of, which finds facts inferentially, defective, 137.

Opinion previously formed by referee upon case submitted to him, no objection to report, if his mind was open to conviction, 225.

Case should not be referred to master until decree has settled rights of parties, 275.

PLEADING AND PRACTICE—Continued.

Set-Off and Counterclaim.

A executed a note to B and wife as joint payees. In a suit brought in their joint names, he offered as a set-off a debt due by the husband, which offer was rejected, *Held*, correct, 356.

In action by railway conductor for wages, company may set-off damages occuring from his negligence, 379.

PLEDGE.

Duty of pledgee of securities to collect interest; depreciation; negligence, 256.

PRACTICE.

[See PLEADING AND PRACTICE.]

PRESUMPTION.

[See EVIDENCE.]

PRINCIPAL AND AGENT.

[See AGENCY.]

PRIVATE INTERNATIONAL LAW.

[See, also, MARRIAGE AND DIVORCE.]

A contract against public policy will not be enforced by English courts, though the contract is valid in the country where it is made, and is entered into between foreign traders. Rouissilon v. Rouissilon, 270.

A child, illegitimate according to English law, but who has been, according to the laws of its domicil and of its parents' domicil, legitimized by a post-natal marriage, can not take under statute of distribution, 337.

Extra-territorial validity of statutes affecting the relation of husband and wife, 374.

Usury; note made and payable in one State for use in another State, 395.

The proper party to bring action determined by *lex fori*, 396.

PROMISE.

[See CONTRACTS.]

PUBLIC EMPLOYMENT.

[See WAREHOUSES AND WAREHOUSEMEN.]

PUNISHMENT.

[See, also, CRIMINAL LAW AND PROCEDURE.]

Punishment by Starving; Prof. Piazzi Smith's theory, 359.

The use of the lash, 417, 480.

Imprisonment for debt in the United States, 517.

RAILROADS.

See CARRIERS; NEGLIGENCE.]

RAPE.

[See, also, ASSAULT.]

Word "feloniously" requisite in indictment for, 36.

On trial for, conduct of defendant at other times irrelevant, 296.

A statute fixing the age of puberty in females at twelve, carnal intercourse with a female under that age is rape, 379.

That woman did not cry out or complain within reasonable time raises presumption against her credibility, 515.

Same where she has subsequent intercourse with prisoner, 515.

RATIFICATION.

[See CONTRACTS.]

RECEIVER.

No suit can be prosecuted against a receiver without the consent of the court appointing him, and the latter may take all such controversies to itself and refuse to allow a suit in another forum. Kennedy v. Indianapolis, etc. R. Co., 89; note by Thos. W. Peirce Esq., 92.

A State statute permitting suit to be brought against a receiver in courts other than the one of his appointment, can not control the action of a Federal court. Id.

A petition claiming damages for personal injury by a defendant corporation in the hands of a receiver, is not a "suit at common law," within the meaning of the Constitution, and the petitioner is not entitled to a jury trial as of right. Id.

A non-resident may be appointed receiver in the Federal courts. Taylor v. Life Assn. of America, 206.

In the Federal courts, the non-resident parties will not be restricted to finding sureties resident in the State where the court is held, when required to give bonds in the progress of the litigation, unless for special reasons the court should so direct. This applies when a non-resident is appointed receiver. Id.

RECEIVER—Continued.

Right of receiver to bring suits in his own name, 454.

Estate in hands of receiver liable upon covenant of corporation to pay rent, 472.

RECORDS.

[See, also, JUDGMENTS AND DECREES.]

A person has no right, at common law, to a copy or abstract of the entire records of a public office, in which he has no special interest, but which he desires to obtain for speculative purposes. Webber v. Townley, 6.

REFEREE.

[See PLEADING AND PRACTICE.]

REFORMATION.

[See EQUITY.]

REHEARING.

[See PLEADING AND PRACTICE.]

RELEVANCY.

[See EVIDENCE.]

REMOVAL OF CAUSES.

Alien corporation not entitled to removal of indictment against it to Federal court, 518.

REPLEVIN.

Where plaintiff seizes property upon his writ, and defendant succeeds in action and is found to be absolute owner of property, and therefore entitled to its return, value should be assessed as of time of trial, 453.

Does action of, lie for title deeds or *choses* in action? Query, 398; answers, 457, 478.

RES ADJUDICATA.

[See JUDGMENTS AND DECREES.]

RESCISSION.

[See CONTRACTS; FRAUD.]

RIGHT OF WAY.

[See VENDOR AND VENDEE.]

RIOT.

Cracking and eating nuts during religious service, a disturbance of religious worship, 59.

ROBBERY.

A was fraudulently induced by two confederates to expose some money in his hand, when one of them snatched it and ran away, the other holding him. *Held*, that this did not constitute robbery, 379.

SALES.

[See, also, AUCTIONEER; TAX SALES; VENDOR AND VENDEE.]

Delivery to carrier makes sale complete at price previously named, 34.

Subsequent notice to vendee that there was a mistake in the price does not affect him, 34.

Where a merchant introduces, under his own name and guarantee, an acid phosphate, stating that it will produce certain results when composted, his right to recover the value of certain bags of it sold by him can not be made to depend solely upon the correctness of the chemical analysis printed upon labels and attached to the bags by the manufacturer. Robson v. Miller, 168.

The words, "fertilizers, compounded of the purest materials," "of the highest standard," "introduced under my own name and guarantee," amount to an express warranty of good results from the article described, as a fertilizer. Id.

Where, in an action for the purchase-money of acid phosphate, the defense is failure of the article to conform to the quality warranted, material, represented by defendant in his testimony to be the substance sold, may be exhibited to the jury, although defendant admits that the seller's directions for composting were not wholly complied with. Id.

Sale of business and good will; name of firm; recommencement of business by vendors; soliciting former customers, 194.

A mistake by the vendor in a sale on credit as to the person upon whose credit such sale is made, will not, in the absence of fraud on the part of the vendee, invalidate the sale. Where, therefore, L, upon whose credit the plaintiffs would not have sold, purchased, without fraud, certain bricks of the plaintiffs, which they sold to him solely on the credit of the defendant, supposing him to be the agent of the latter, though nothing concerning the fact of such agency was said, and L thereafter sold the same to

SALES—Continued.

the defendant, against whom, after due demand for the return or the price of the bricks, the plaintiffs brought an action of tort, it was *held*, that the plaintiffs could not recover. Stoddard v. Ham, 311.

Delivery of chattels to vendee with the price charged to him on books of the vendors, under agreement that price should be paid in instalments, and that until paid for goods shall remain property of vendors subject to their removal, not a bailment but a present sale; *bona fide* purchaser for value, without notice, from vendee, takes title to goods as against original vendors, 356.

Conditional sale of horse; death of, before sale, absolute, 410.

SCHOOLS AND SCHOOL LAW.

Power of board to expel pupils; rule suspending pupil for absence, proper, 157.

SEDUCTION.

In prosecution for, that woman was guilty of lewd conduct when a young girl, not relevant, 16.

In prosecution for, statements made by prosecutrix before grand jury in former proceeding for rape, admissible, 138.

Indictment must show that woman was of chaste character on day of offense, 215.

SENTENCE.

[See CRIMINAL LAW AND PROCEDURE.]

SET-OFF.

[See PLEADING AND PRACTICE.]

SLANDER AND LIBEL.

Words charging a woman with sleeping with a man, not her husband, impute to her a want of chastity, and are actionable *per se*, 36.

Fact that woman bears different name from person with whom she is charged to have been intimate, tends to prove that she is not latter's wife, 36.

Defendant in an action of slander was charged with saying of the plaintiff that she slept with a man not her husband. The proof showed the statement to be that such person was in bed with her. *Held*, immaterial, 36.

Repeal of Missouri statute creating criminal offense of libel; construction of, 157.

Compromises of criminal prosecutions for libel condemned, 160.

Where words taken in their primary sense are not libelous, there must be evidence of facts which would reasonably make them defamatory in their secondary sense, known both to the person who indicted the libel, and to those to whom it was published, 194.

Exemption of counsel from liability for words spoken at trial, 225.

An advertisement by the owner of the copyright of an engraving, and not of the design, warning printsellers against selling any copies of the subject of the engraving, is a trade libel upon the producer of a Berlin woolwork pattern of the subject, and if damages resulted, would be actionable. Dicks v. Brooks, 368.

Words imputing sodomy, not actionable *per se*, 439.

Effect of subsequent repetition of slanderous words, 451.

Failure to sustain justification evidence of malice, and may increase damages, when, 451.

Libels touching persons in their calling; article from *Law Times*, 483.

SOCIETIES.

Jurisdiction of courts over societies; no jurisdiction where society possesses no property, 19.

Friendly society; appointment of collectors for; collectors furnished with collecting books; incoming collectors purchasing books of outgoing collectors; dismissal of collector; property in collecting books, 117.

Member of benefit society in which benefits to be derived are regulated by by-laws, does not stand in relation of creditor to society, but can claim only such privileges and under such regulations as are prescribed by by-laws in force at time, 156.

SPECIFIC PERFORMANCE.

[See CONTRACTS; EQUITY; TRUSTS AND TRUSTEES.]

STATUTES.

Rule that where statute has received judicial construction in another State, that construction will be followed in courts of State which has copied it, subject to limitation that decision of former State cannot be presumed to be known to latter State antecedent to its publication, 240.

STATUTES—Continued.

Where provisions of unconstitutional act attempt to repeal former statute, repealing clause falls with act, 240.

STATUTE OF FRAUDS.

[See CONTRACTS.]

STATUTE OF LIMITATIONS.

[See LIMITATION.]

STOCKHOLDER.

[See CORPORATIONS.]

STOPPAGE IN TRANSITU.

Re-sale of goods *in transitu* by purchaser, receipt by the sub-purchaser of delivery orders for whole, and actual receipt of part of cargo, do not put an end to *transitus*, so as to prevent the original vendor's right of stoppage attaching to unpaid purchase-money due from sub-purchaser, although right to stop goods themselves may be gone, 194.

STOREKEEPERS.

The Discretion of Storekeepers in Serving Customers 426.

SUNDAY LAWS.

[See CONTRIBUTORY NEGLIGENCE.]

SURETIES.

[See SURETYSHIP AND GUARANTY.]

SURETYSHIP AND GUARANTY.

In General.

Right of guarantor to notice of acceptance, 37.

Alteration in guaranty after delivery to debtor of "we" into "I" not material, 37.

Guarantor not released by false representations in which plaintiff did not participate, 137.

Guaranty of honesty of servant; prosecution of servant, condition precedent to suit, 215.

Action on a guaranty as follows: "H. R. H., Esq.: If Mr. J. G. H. contracts with you for lime and plaster to be used in fire-proofing and plastering City Hall and Court House buildings in Providence, promising to pay your bills from moneys received by him for work done on said buildings, I will guarantee the faithful performance of such contract with you. Yours truly, J. G. B." *Held*, that this offer of guaranty was conditional; that B was entitled to notice that the condition was accepted, and that without distinct notice of such acceptance it did not take effect. King v. Batterson, 226.

Sureties upon an undertaking on appeal not released by mere delay of plaintiff in bringing suit, 240.

Sureties can not release themselves from liability by notice to creditor to enforce his demand against principal debtor, 240.

Failure of creditor to revive judgment does not discharge surety unless there was an express agreement at time of giving judgment that it should be kept revived for benefit of surety, 257.

Under Kentucky statute providing that "no person shall be bound as the surety of another by the act of an agent, unless the authority of the agent is in writing signed by the principal," subsequent admission of surety that he gave authority, not binding, 298.

Release of sureties on note by acts of payee, 314.

Erasure of date in note discharges surety, 396.

Release of surety by extension of payment, 498.

Presumption that person writing his name on back of note is a guarantor, 452.

In action against partnership on guaranty executed by one of the parties, defendant can not prove that there was an agreement between themselves as partners, that neither of them should assume any liability on behalf of the firm out of the line of its regular business without consent of the others, 452.

In such an action not error to instruct jury that if, as between plaintiff and maker of note, maker could not use an account on its books as a set-off against note, defendants as guarantors could not, 452.

Alteration of promissory note by payee discharges surety, 515.

Surety may require holder to sue, 515.

Measure of damages in suit on guardian's bond, 515.

Official Bonds.

Statute requiring bonds to be made to "People of the State," bond given to "County of Bay" not invalid after approval of supervisors, 35.

Effect of re-election of officers upon sureties, 375.

SURETYSHIP AND GUARANTY—Continued.

Where compliance with the requirements of a bail bond or recognizance is prevented by the act of God, the public enemy, or the obligee of the bond, the obligor will be excused. Adler v. State, 484.

When a prisoner charged with murder in the first degree is admitted to bail, the sheriff may take the recognizance, when an order of the court, fixing the amount of the bail, authorizes him to do so. Id.

SURVIVAL OF ACTIONS.

[See CONSTITUTIONAL LAW.]

TAXATION.

Person who carries on business of buying timber and converting it into lumber for sale, not a "trader" nor subject to be taxed as such, 59.

One who sells his goods at public auction is an "auctioneer," and liable as such for a license fee, 59.

What is a "purely public charity," within Pennsylvania law, 76.

National bank not subject to taxation by city, 96.

Telegraph poles should be assessed as real estate, 140.

Commercial agents, "solicitors" within Nevada statute, 159.

A tax assessed for public purposes can not constitutionally be imposed upon a portion only of the real estate of a town, leaving the remainder exempt, 195.

Where taxation is for public purposes, assessment must be on basis of valuation; when for local purposes, on basis of benefits conferred, 195.

Payment of taxes by second mortgagee; action to recover against owner of equity of redemption, 278.

A tax paid under protest can not be recovered back on the ground that the collector had falsely assessed the property of the township at less than its value—the tax proceedings being regular on their face. Moss v. Cummins, 367.

Assessment; re-assessment; equity; cloud on title, 412.

The Drummers' Occupation tax (Texas), 417.

When power is expressly given to it by its charter, a municipal corporation may levy the cost of local improvements by assessments, in whole or in part, on the property specially benefited. Murphey v. Mayor of Wilmington, 427.

The collection of such assessments will not be prohibited by injunction, except under special circumstances, such as leave the complainant without any remedy at law, and bring his case under some one of the recognized heads of equity jurisdiction, as of fraud, irreparable injury, clouding title to real estate, or the prevention of a multiplicity of suits. Id.

If a city ordinance imposes certain conditions which must be complied with in order to make a valid assessment or tax, the neglect or omission of the city's officers or agents to comply with any one of the conditions renders the tax void; and should the payment of an invalid tax be enforced by a threatened or actual sale of property, real or personal, the owner may pay the amount of the tax under protest and bring his action against the city to recover back the amount so paid, or he may have an action of trespass for the recovery of damages; or, where real estate has been sold under a tax levy, the owner may test the validity of the tax by an action of ejectment. Another remedy is by a writ of *certiorari*. Id.

County can not legally collect larger sum for advertising tract of land in delinquent tax list than it pays to publisher, 453.

Tax deed, founded upon sale including sum of seventeen cents in excess of actual costs of advertising, invalid, 453.

TAX SALES.

[See TAXATION.]

TELEGRAPH COMPANIES.

[See, also, NEGLIGENCE; TAXATION.]

When courts will order production of originals of telegrams, 99.

Same; dissenting opinion of Lewis, P. J., in *ex parte* Brown, 115.

Proof of telegraphic messages how made, 395.

Telegraphic messages are not privileged communications, and are not exempt from the process of courts. *Ex parte* Brown, 491.

A statute subjecting to punishment any officer or servant of a telegraph company who discloses the contents of any private dispatch, does not apply to a case where the dispatch is called for by legal process. Id.

Where a court has the power to compel an officer of a telegraph company to produce certain telegrams, the fact that the rules of the company prohibit him from so doing will not excuse him. Id.

A subpœna *duces tecum* for the production of telegrams must describe them with reasonable certainty, either by their date, title, substance or subject-matter. A call, therefore, in a subpœna issued by a grand jury for any and all messages passed between certain named parties during the last fifteen months, is insufficient. Id.

TELEPHONE COMPANIES.

Rights and obligations of, 359.

THANKSGIVING DAY.

[See DIES NON JURIDICUS.]

THEATRES.

Theatre ticket a lease, not a license, 257.

Action for expulsion of negro from theatre, 257.

Rights of managers and public, 400, 480.

TITLES.

Clouds upon Title; article by Henry Wade Rogers Esq., 261.

A lien or incumbrance that clouds a title to real estate, so as to entitle the owner to relief in equity, is one that is regular and valid on the face of the proceedings, but is in fact irregular and void from circumstances which have been proved by extrinsic evidence. If the invalidity of the assessment is apparent on the record of the proceedings by which it was laid, and requires no proof *aliunde* to show it, such assessment does not cast a cloud upon title and the remedy of the owner is in a court of law Minfley v. Mayor of Wilmington, 427.

TRADE LIBEL.

[See INJUNCTION.]

TRADE-MARKS.

[See PATENTS, COPYRIGHTS AND TRADE-MARKS]

TRESPASS.

[See, also, CARRIERS.]

The public have only an easement in the highway to pass and repass along it. Therefore, when one stops in the road and uses loud and obscene language, he becomes a trespasser, and the owner of the land has the right to abate the nuisance which he is creating, 59.

Where trespasser enters upon land of another, and severs timber therefrom which he sells to third party, and buyer goes upon land to remove it, latter is liable in trespass, even though he was ignorant, 57.

Occupying house as school house without consent of owner a trespass; all parties concerned liable for its destruction by fire though accidental, 354.

Wanton destruction of property by persons removing obstructions from a highway, a, 386.

F having some beef for sale, B promised to take some at market price at time of delivery. F soon after delivered a quarter of beef at B's house in latter's absence, and B ate some of it for his supper. But next day F charged him six cents a pound for the beef, and having discovered that the highest market price was only four cents, he notified F to take it away. F took away what was left, and sold it, abating a small amount from the price, because it had been cut. *Held*, that trespass would not lie against B, 414.

TROVER.

Liability of railroad for conversion of ties by subcontractor, 19.

Where the defendant, the owner of real estate, agreed with B that the latter might erect buildings upon said estate, and that they were not to be the property of the defendant, but that B should have the right to remove them at any time, and B thereafter sold said buildings to C, by bill of sale not recorded, and the defendant, at B's request and without notice of said sale to C, subsequently sold said estate to an innocent purchaser without notice of C's title, it was *held* that the defendant was liable to C, in an action of tort in the nature of trover, for the value of the buildings. Dolliver v. Ela, 86.

When price of actual sale not evidence of value of goods converted, 118.

TRUSTS AND TRUSTEES.

Banking account; mixed account of private and trust funds; following trust funds into banking account, 117.

Trustee; mortgage; liability of *cestui que trust*, 257.

V, in consideration of a legacy of $30,000, verbally promised the testator to give W $10,000, and after the testator's death admitted the trust in writing, but afterwards retracted it. *Held*, that specific performance would be decreed, 319.

ULTRA VIRES.

Certain Cases where the Defense of Ultra Vires is Inadmissible in Actions against Corporations: article by Arthur Biddle, Esq., 81, 101.

USAGES AND CUSTOMS.

Custom cannot override express agreement, 34.

A usage, or custom, to have the authority of law, must be shown to have existed from time immemorial, to have been uninterrupted during the whole of such period, not subject to contention or dispute, certain, consistent and compulsory; and where the court found that for many years there had existed throughout the State of Indiana the custom entitling persons slaughtering and packing hogs to a lien on the products of the hogs slaughtered for the charges of slaughtering, curing, packing and selling, and also to a lien for the sums of money advanced by persons engaged in such business: *Held*, that these facts were not sufficient to establish a usage or custom having the force of law. Shaw v. Ferguson, 107.

Taking a commercial note for a debt, which is a lien resting on usage, upon personal property, is a waiver of the lien, Id.

Custom to excuse negligence, properly excluded, 155.

Custom of boat to notify passengers of arrival at destination, 157.

A custom of the port of Baltimore, of consignees to refuse to receive brimtsone in windy weather, is a good custom, 354.

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[See INTEREST.]

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Where, at time of grant, close was used for agricultural purposes, owner and tenants not entitled to right of way to close, for purpose of using it as building land, 139.

Deed signed but not delivered, good only as evidence of sale, 178.

What not sufficient delivery of deed, 156.

Vendor and purchaser; conveyance of land for intended building; covenant by vendor to inclose purchased land with wall or railing; action for breach; measure of damages, 410.

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[See PASSAGE OF LAWS.]

WAGERS.

Curiosities in the Law of; article by W. H. Whitaker, 184.

Draw poker, not a game of the like kind wfth faro, keno, etc., and not within meaning of statute against keeping tables for such games or "tables of the like kind," 199.

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Warehousing and compressing cotton, not a public employment, 176.

Liability of warehouseman for safe keeping of goods ready for delivery, 154.

Who may issue negotiable warehouse receipts in Pennsylvania, 276.

WARRANTY.

[See SALES.]

WILLS.

Proportion of money coming to devisees on quit claim by one. Query, 158; answer, 198.

On bequest of income on certain amount, who entitled to surplus? Query, 38; answer, 98.

A sealed agreement for a valuable consideration not to make a will to the prejudice of the rights of the covenanter's heirs in his estate, is valid, 59.

Construction of contingent remainder in will, 96.

Term "second cousins" in wills does not include first cousins, once removed, 199.

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Under power to sell in will, party cannot make mortgage, 278.

Revocation of will by codicil, 278.

Testator bequeathed his wife $5,000, "to be paid to her, as far as can be, out of the insurance money coming to my estate from the insurance on my life." He had three policies on his life, amounting to $2,500, all payable to his wife, on which he always paid the premiums, which he always kept in his possession, and which he delivered to his executor. He had no other life insurance. *Held*, that the amount of these policies, received by the widow, must be credited on the legacy, 319.

On devise of bonds, overdue interest coupons do not pass, 354.

Where husband a legatee, wife a competent witness to execution, 358.

Delivery of savings-bank book without written assignment or order, sufficient to constitute a valid gift *causa mortis*, and donee may maintain action against bank for the amount of deposit, in name of the administrator, without his consent, 374.

A donee *causa mortis* takes his title to property subject to right of administrator to reclaim it, if required for the payment of debts. But where donee is only creditor, bank can not resist payment on ground that estate has been represented insolvent by administrator, 374.

General clause in will, directing payment of all "just debts" will not revive barred debt, 386.

Testamentary capacity; undue influence; neighborhood rumor as evidence, 397.

Devisee may bring ejectment before probate of will, 414.

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Equity may carry out provisions of informal will, 414.

WITNESSES.

[See CRIMINAL EVIDENCE; EVIDENCE.]

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WORDS AND PHRASES.

[See INTERPRETATION.]

WRITTEN INSTRUMENTS.

[As to how far written instruments are subject to parol evidence, see EVIDENCE. As to construction of particular words in written instruments, see INTERPRETATION.]